

TAX SEMINAR-NORTH RIFT BRANCH

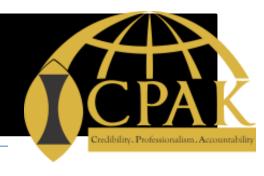
Date: 30th January 2020

Presentation by:

Nickson Omondi

Recent KRA's Aggressive Audit: What is in for me?

Agenda



- Introduction; Why tax audits, levels of compliance etc.
- Aggressive tax audits and assessments.
- Dealing with a tax audit.

Introduction



The main objective of a revenue audit is to promote voluntary compliance; This is done to;

- ❖ Determine the accuracy of a return, declaration of tax liability or claim for repayment, set off or refund.
- Collect the tax, interest and penalties where appropriate
- Specify remedial action where errors or irregularities are discovered
- Consider what procedures or changes are necessary to facilitate counter-evasion activities
- Evaluate and recommend for prosecution where strong indication of serious tax evasion/avoidance

Current Compliance Landscape



- Include, Compliance levels I,II or Investigations
- Types of audits;
- 1. Full audits The scope of a full audit is all encompassing.
- 2. Limited scope audits Limited scope audits are confined to specific issues on the tax return and/or a particular tax scheme arrangement employed by the taxpayer.
- 3. Single issue audits Single issue audits are confined to one item of potential non-compliance that may be apparent from examination of a taxpayer's return.

Aggressive Tax Audits- Key areas

- Corporation tax (Chargeability, accrued, allowability and reconciliation issues)
- VAT has including VAA (mismatches), Missing trader, ETR, Registration etc.
- ❖ PAYE (expatriates, part-timers, foreigners, allowances such as non cash, employee vs consultant debate etc)
- Withholding tax, (rate for resident and nonresident, definitions of professional and management, due date etc)

Aggressive audit areas

- Pensions (Registered vs unregistered, exemptions, treating excess contributions etc.)
- Excise (Rates, financial sector and the issue of defining interest, excise stamps, flow meters and the system)
- Capital Gains Tax (Due date, what is taxable, exemptions and its procedures, Business and CGT definitions...
- Customs including misdeclarations, exports and exemptions, TREOs, EPZs, Restricted goods and prohibitions.

Key Areas Contd.



- *Advance Tax, due date and correct rates.
- Stamp duty and excise duty stamps.
- *Betting, gaming and lotteries tax, Withholding taxes, excise taxes etc.
- Agency taxes such as Kebs levy and sugar development levy.
- Investment deduction and capital allowances in General... Rates, qualifying costs, when first used, when used etc.

Dealing with Tax audits



Key note;

The best way to prepare for tax audits is never to be audited at all.

Answer

This is because human is to err.

Legislative Provisions



- The power to audit is a delegated power from the commissioner according to Tax procedures Act, 2015.
- The authority can access premises, books, records and other information under Sec 58,59 and 60 of the TPA 2015.
- The authority has been granted further powers of a police office.

Typical audit process

- Notification of an intention to audit
- it 👃

- Entry interview
- Tour of premises
- Examination of records, books and obtaining copies of such.
- Discussing the finding and reconciliations or evidence as necessary.
- Closing/Exit interview or meeting
- Notifications of audit findings
- Objection and appeals or ADR.

Rights before and during audits



- To be treated with courtesy and consideration during the audit including identification in accordance to The constitution of Kenya, 2010; Chapter 4 part 1-3 deals with the bill of rights, rights and fundamental freedoms etc.
- Presumption of honesty where books are examine objectively.
- A taxpayer has a right to ask and obtain information sought for including right to be heard fairly in accordance with the Fair Administration of Justice Act 2015. Sec 4 of the act requires administration action to be taken expeditiously, efficiently, lawfully, reasonably and procedurally fair.
- Impartial and integrity and what is due should be payable and t taxman cannot take what I not properly due.

Rights contd.

- To be treated with confidentiality and privacy according to Sec 6 of the TPA 2015
- Right to objection and appeal in accordance to sec 49-57 of the TPA covering Objecting, tax appeals Tribunal, high court and the court of appeal.
- Right to alternative dispute resolution also known as ADR Sec 55
- Right to appoint a tax agent or representative Sec 15 and 19 of the TPA 2015. Its key to seek the expertise of professionals.

Rights Contd.



- To be granted an extension to pay tax Sec 33-35 of the TPA
- To apply for waiver of penalties and interest Sec 89(6)
- Refund of overpaid tax Sec 47-48 of the Act.
- To a public or private ruling on application as detailed in Sec 62-69 of the TPA 2015.

Obligations of a taxpayer



- Register for a tax obligation Sec 8 of the TPA
- Keep proper books of account/entries according to Sec 23 of the TPA 2015
- To provide declarations Sec 24-28 of the TPA 2015
- Pay the correct amount of tax

Other salient issues



• Timing of assessments.

Whereas normal assessments are carried out over 5 years as required under Sec 31 of the TPA, the audits can be cover longer periods owing to tax evasion, false returns, non-returns etc.

Cooperation during audits

Cooperate legally with the officer handling the matter without compromising on *integrity*. Produce documents and answer relevant queries during the audit.

Others...



• Review of records

Review records regularly ensure compliance. Some do engage professionals to do compliance checks and pay any taxes if due.

Strengthen internal audit functions

By having relevant and qualified staff to handle tax matters professionally on a timely basis. They can also handle emerging issues as well.



